

The claimant makes the following request:

- (2) If the Award of the Administrative Law Judge is affirmed by the Appeals Board then the medical expenses contained in the joint stipulation filed by the parties be ordered paid.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidentiary record and considering the arguments of the parties, the Appeals Board finds and concludes as follows:

The Administrative Law Judge found that the claimant had suffered an accidental injury that arose out of and in the course of his employment with the respondent on December 24, 1992. The parties stipulated that if the claimant's claim was found to be compensable, the award for permanent partial general disability benefits would be based on a functional impairment rating of three and one-half percent (3.5%). Accordingly, the Administrative Law Judge awarded the claimant a three and one-half percent (3.5%) permanent partial disability as a result of his work-related injury. Respondent argues that the claimant failed to meet his burden of proof that it was more probably true than not that his resulting disability was work related.

The Appeals Board finds and concludes that the Administrative Law Judge's Award should be affirmed in all respects. The Appeals Board also finds that the Administrative Law Judge's findings of fact and conclusions of law are correct, well reasoned, appropriate and are hereby adopted by the Appeals Board as its own to the extent they are not inconsistent with the findings and conclusions as set forth below.

On December 24, 1992, the claimant was employed by the respondent as a cashier. While lifting cases of two (2) liter pop, the claimant felt a burning sensation in his mid to low back. After claimant left work, his back became more symptomatic and he sought medical treatment at the Providence-St. Margaret Health Center Emergency Room. He was advised that he should follow up with a physician. When he returned to work on December 27, 1992, he notified the respondent of his injury and need for medical treatment. Respondent did not obtain an appointment with a treating physician for the claimant until January 15, 1993. During that time, the claimant received treatment for his back condition on his own with a chiropractor.

Respondent referred the claimant to Dr. Robert J. Takacs, an orthopedic surgeon, who first saw the claimant on January 15, 1993. Dr. Takacs diagnosed a thoracolumbar strain with no evidence of bone or nerve injury and no radiculopathy. He treated the claimant conservatively, prescribing anti-inflammatory medication, physical therapy and exercises. The claimant was placed on light work with temporary restrictions.

As a result of the physical therapy, claimant made progress. However, during an examination of the claimant on February 10, 1993, Dr. Takacs found swelling at the T10 vertebrae in the thoracolumbar area that was very tender. He ordered an MRI that indicated a soft tissue mass in this area. A sonogram was ordered which determined that the mass was either a hematoma or a tumor. Surgery was performed by Dr. Takacs on March 15, 1993, to excise the mass located in the mid to lower thoracic area of claimant's back. The mass was found to be a staphylococcal abscess.

Because of the staph infection, Dr. Takacs consulted with Dr. David S. McKinsey, a physician specializing in infectious diseases. Dr. McKinsey placed the claimant on antibiotic intravenous therapy for treatment of the infection. Claimant was followed by Dr. Takacs until June 16, 1993, when he was released for regular work with no permanent restrictions. Dr. McKinsey last saw the claimant on July 14, 1993, opining that the staphylococcus aureus soft tissue abscess was resolved.

The central argument in this case is whether the staph abscess that developed in claimant's back was causally connected to his work-related accident of December 24, 1992. Respondent depends on the opinion of Dr. Takacs, the orthopedic surgeon who surgically excised the staph abscess. Dr. Takacs opined that the staph abscess was not work related because there was no evidence of a puncture wound that occurred at work. It was Dr. Takacs' opinion that the cause of the claimant's staph abscess was infection that occurred spontaneous in the claimant.

On the other hand, Dr. McKinsey, the physician specializing in infectious diseases, disagreed with Dr. Takacs' opinion that the infection appeared spontaneous. Because Dr. McKinsey had never experienced a patient with this type of infection, he performed a complete physical examination and ordered additional laboratory tests to determine the cause of the abscess. Dr. McKinsey concluded that the most reasonable theory relating to the causation of the infectious abscess was that the bacteria from a skin infection spread through the claimant's body, happened to encounter the abnormal anatomy in the claimant's back caused by a bruise or muscle damage, which then localized in the abnormal area, began to grow and eventually caused a large infection.

In a workers compensation case, injuries are compensable where the accident only serves to aggravate, accelerate or intensify the affliction of an existing disease. See Johnson v. Skelly Oil Co., 181 Kan. 655, 659, 312 P.2d 1076 (1957) and Claphan v. Great Bend Manor, 5 Kan. App. 2d 47, 611 P.2d 180, rev. denied 228 Kan. 806 (1980). After a review of both Dr. Takacs' and Dr. McKinsey's medical records and evidentiary depositions, the Appeals Board finds Dr. McKinsey's theory as to the causation of the infectious abscess more plausible than Dr. Takacs'. Dr. McKinsey's opinion is given more weight since he is a physician specializing in infection and Dr. Takacs did not have that specialty. Accordingly, the Appeals Board finds that the claimant's infectious abscess had a causal connection to his work-related accident of December 24, 1992 and he is thus entitled to appropriate benefits.

(2) Medical expenses contained in the stipulation filed in the evidentiary record by the parties are also ordered paid by the Appeals Board as authorized medical expenses.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Robert H. Foerschler dated May 9, 1994, should be, and is hereby, affirmed as follows:

AN AWARD OF COMPENSATION HEREBY ENTERED IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Daniel J. Vega, and against the respondent, Clark Oil Company, and its insurance carrier, National Union Fire Insurance Company, for an accidental injury which occurred on December 24, 1992, and based on an average weekly wage \$229.91.

The claimant is entitled to 11.43 weeks of temporary total disability compensation at the rate of \$153.28 per week or \$1,752.00, followed by 403.57 weeks at \$5.37 per week or \$2,167.17 for a 3.5% permanent partial general disability, making a total award of \$3,919.17 .

As of August 31, 1995, there is due and owing the claimant 11.43 weeks of temporary total disability compensation at the rate of \$153.28 per week or \$1,752.00, followed by 128.57 weeks of permanent partial general disability compensation at the rate of \$5.37 per week in the sum of \$690.42, for a total of \$2,442.42 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$1,476.75 is to be paid for 275 weeks at the rate of \$5.37 per week, until fully paid or further order of the Director.

Medical expenses to Baptist Medical Center in the amount of \$12,253.94, Associated Medical Equipment in the amount of \$3,631.80 and Ost, Talbott and Smith in the amount of \$266.00 are ordered paid by the respondent as authorized medical expenses.

All other findings and orders of the Administrative Law Judge in this Award are adopted and incorporated herein by the Appeals Board.

IT IS SO ORDERED.

Dated this ____ day of August, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Larry T. Hughes, Topeka, Kansas
Denise E. Tomasic, Kansas City, Kansas
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director